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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1048

ROBERT CHEVOOR,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

PETITIONER'S SUPPLEMENTAL BRIEF ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Pursuant to Rule 24 of the Supreme Court Rules, the petitioner respectfully submits this supplemental brief to bring to the Court's attention the case of *United States* v. *Jacobs* decided by the Court of Appeals for the Second Circuit on February 24, 1976, Docket No. 75-1319, 18 CrL 2562. Petitioner submits that the decision of the First Circuit, herein, is in direct conflict with the decision of the Second Circuit in *United States* v. *Jacobs, supra,* wherein the Second Circuit affirmed the district court's dismissal of a perjury indictment in the exercise of its

supervisory powers under circumstances substantially identical to the instant case:

As in this case, the perjury indictment in *United States* v. *Jacobs, supra*, was predicated upon a discrepancy between the defendant's grand jury testimony and a tape recording of her conversation, of which the defendant was unaware at the time she testified; the Second Circuit held that the failure of the Strike Force attorney to provide full *Miranda* warnings warranted the dismissal of the indictment in the exercise of the court's supervisory powers.

In this case, however, the First Circuit held that dismissal was not warranted, even though the district court found that the defendant herein was given *no Miranda* warnings, was misled by the government into believing he "had to testify" before the grand jury, and was brought before the grand jury by the Strike Force attorney for "the prime purpose" of obtaining a perjury indictment against him (App. A. 24, 25, 28 and 31-32). In these circumstances, the First Circuit should have affirmed the right of the district court to dismiss the indictment. *United States* v. *Jacobs*, Docket No. 75-1319 (2nd Cir. February 24, 1976) 18 CrL 2562; *United States* v. *Rangel*, 496 F.2d 1059 (5th Cir. 1974); and see *Brown* v. *United States*, 245 F.2d (8th Cir. 1957).

Finally, the opinion of the court in *United States* v. *Jacobs, supra*, refutes the government's attack herein. At page 8 of its memorandum, the government misrepresents that "The logical thrust of petitioner's argument is that the grand jury is foreclosed from compelling the appearance of any prospective witness who is likely to commit perjury." The Second Circuit, while affirming the dismissal of the perjury indictment in *United States* v. *Jacobs, supra*, exposes this fallacy by stating "We do not mean to imply that a potential defendant has a constitu-

tional right not to be called before the Grand Jury at all. . . . Nor do we deal with perjury committed by a prospective defendant after adequate warning of his status."

The heart of the Second Circuit's opinion in *United States* v. *Jacobs, supra,* is that the Strike Force attorney's conduct was, "if not in actual violation of the Constitution . . ., at least outside the penumbra of fair play." The First Circuit, confronted in this case with even more opprobrious conduct by a Strike Force attorney, departed from the accepted standards of prosecutorial fairness enunciated by the Second, Fifth and Eighth Circuits.

Petitioner respectfully urges that his petition for writ of certiorari be granted to resolve this conflict among the circuits, to promulgate uniform standards of prosecutorial conduct, and to establish the power of a district court to dismiss an indictment predicated upon prosecutorial misconduct and the impairment of constitutional rights.

Respectfully submitted,

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